



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2005

Ms. Maleshia B. Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-08935

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 233461.

The Fort Worth Police Department (the "department") received a request for all offense reports, arrest reports, book in reports, arrest affidavits, records, victim and witness statements pertaining to a particular sexual assault. You state that you will release some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the submitted documents labeled Exhibit D are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus the medical records in Exhibit D may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

Turning to the remaining submitted information, section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The information at issue relates to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, in those instances where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim’s privacy. Although you argue that the entire report should be withheld on the basis of common law privacy to protect the victim’s identity, you have not given us any information that would lead us to believe that the requestor knows the victim’s identity. Thus, you have not demonstrated that the entire report must be withheld on the basis of common law privacy. After reviewing the submitted information, we have marked the information that is protected from disclosure by the common law right to privacy under section 552.101. Additionally, we note that the submitted information includes audio recordings. In accordance with common law privacy, the department must withhold the identity of the victim of sexual abuse in the submitted audio recordings. However, to the extent the department does not have the technological capability to redact this information from the audio recordings, we conclude the department must withhold the audio recordings in their entirety.

Lastly, you note that the remaining submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked.

In summary, Exhibit D contains medical records which may be released only as provided under the MPA. We have marked the information that is protected from disclosure by the common law right to privacy under section 552.101. Additionally, the department must

withhold the identity of the victim of sexual abuse in the submitted audio recordings. To the extent the department does not have the technological capability to redact this information from the audio recordings, the department must withhold the audio recordings in their entirety. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

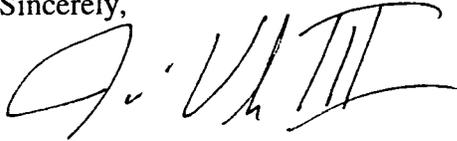
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'José Vela III'. The signature is stylized with a large initial 'J' and 'V'.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 233461

Enc. Submitted documents

c: Gilbert Towns
GT Investigative Services
P. O. Box 26744
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(w/o enclosures)